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REVIEW OF THE IMPLEMENTATION OF AND FOLLOW-UP TO THE CONVENTIONS ON SLAVERY

REVIEW OF INFORMATION RECEIVED REGARDING THE IMPLEMENTATION OF THE CONVENTIONS AND PROGRAMMES OF ACTION

Report of the Secretary-General on the implementation of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, submitted pursuant to Sub-Commission resolution 1994/5

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Introduction

1. The Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography in its resolution 1992/74 of 5 March 1992 and recommended to all States, whether or not they were parties to the Convention on the Rights of the Child, that they adopt legislative and administrative measures necessary to carry out the Programme of Action at the national and international levels. The Commission requested the Sub-Commission to submit every two years a report to the Commission on Human Rights on the state of implementation of the Programme of Action by all States. The text of the Programme of Action can be found in the annex to Commission resolution 1992/74.

2. In its resolution 1994/5, the Sub-Commission requested the Secretary-General to invite States to inform the Working Group of measures adopted to implement the Programme of Action and to submit a report thereon to the Sub-Commission at its forty-seventh session and to the Commission at its fifty-second session.

3. In order that the Working Group might examine this matter at its twentieth session, the Secretary-General on 2 December 1994, sent notes verbales to Governments requesting the desired information. As of 21 March 1995, replies had been received from Angola, Brunei Darussalam, Croatia, Mauritius, Nepal, Norway, Sweden and Yugoslavia. These replies are contained in the present document.

REPLIES RECEIVED FROM GOVERNMENTS

Angola

[Original: French]
[14 January 1995]

4. The Government of the Republic of Angola has established a Children's Institute to deal with questions relating to children in the context of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography.

Brunei Darussalam

[Original: English]
[3 February 1995]

5. The Government of Brunei Darussalam stated that the issues concerning the sale of children, child prostitution and child pornography did not occur in the country.

Croatia

[Original: English]
[27 January 1995]

6. In the Republic of Croatia, the protection of children from sale, child prostitution and child pornography is regulated by penal legislation. Substantive penal law in force defines criminal offences with a view to protecting children from, among other things, being shown pornographic material. Important in this sense is article 206 of the Basic Criminal Law of the Republic of Croatia, which stipulates that each person who shows or makes available pornographic material to a person under 14 years of age shall be punished. Article 206 reads as follows:

"Showing pornographic material

"A person who shows, or makes available through a public presentation or in some other way, acts, pictures, audiovisual or other items of pornographic content to a person under 14 years of age, or shows him or her a pornographic performance, shall be punished by fine or a prison sentence up to one year.

"The protection of the child from abuse aimed at prostitution is provided for by article 87 of the Criminal Law of the Republic of Croatia. It provides for punishment of persons for procuration of persons under age, while article 205 of the Basic Criminal Law prescribes punishment for mediation in prostitution. A more severe sentence is provided for mediation in prostitution of a person under age. Articles 87 and 205 respectively read as follows:

"Procuration

"(1) A procurer of a person under age shall be punished by a prison sentence from three months to three years.

"(2) A person engaged in procuring female persons for reward or allowing prostitution for reward shall be punished as specified under paragraph 1 of this article.

"Mediation in prostitution

"(1) A person who procures, induces, incites or entices female persons to prostitution or who in any way takes part in handing over a female person to another person for the purpose of prostitution, shall be punished with a prison sentence of three months to five years.

"(2) If the act referred to in paragraph 1 of this article is committed on an under-age female person or using force, threat or deceit, the perpetrator shall be punished with a prison sentence of one to ten years."

7. The sale of children is punishable under article 134 of the Basic Criminal Law. Under paragraph 3 of this article, each person who buys, sells, hands over to another person or mediates in a sale, purchase or handing over of a person under age shall be punished. For such criminal offences the severest prison sentence can be meted out. Article 134 reads as follows:

"(1) A person who, in contravention to international law, reduces a person to the servile or similar status, or keeps him in such a status, buys, sells, hands over to another person or mediates in the purchase, sale or disposal of such a person or induces another person to sell his freedom or the freedom of a person dependant on him, shall be punished with a prison sentence from one to ten years.

"(2) A person who transports in the servile status from one country to another shall be punished with a prison sentence from six months to five years.

"(3) A person who commits the offence referred to in paragraphs (1) and (2) of this article on a person under age shall be punished with a prison sentence of at least five years."

8. However, the Republic of Croatia pointed out that no case of trade in children or of abuse of children aimed at child pornography was recorded in 1993 and the first three quarters of 1994. In the same period, no case of child disappearance was reported.

Mauritius

[Original: English]
[20 February 1995]

9. The Government of Mauritius enacted the Child Protection Act in 1994. Sections 13 to 16 relate to the prevention of the sale of children, child prostitution and child pornography.

10. Section 13 of the Act, dealing with ill-treatment, stipulates:

"(1) Any person who ill-treats or otherwise exposes a child to harm shall commit an offence.

"(2) For the purposes of this section, any person who in an advertisement exploit a child by using him in such a way as is likely to cause in him or in any child watching his reactions which are contrary to morality or detrimental to psychological development shall be deemed to expose a child to harm.

"(3) Any parent who neglects or abandons a child shall commit an offence."

11. Section 14 of the Act further stipulates:

"(1) Any person who causes, incites or allows any child:

(a) to be sexually abused by him or by another person;

(b) to have access to a brothel;

(c) to engage in prostitution

shall commit an offence.

"...

"(4) For the purposes of subsection (1) (a), a child shall be deemed to be sexually abused where he has taken part whether as a willing or unwilling participant or observer in any act which is sexual in nature for the purpose of:

(a) another person's gratification;

(b) any activity of pornographic obscene or indecent nature;

(c) any other kind of exploitation by any person."

12. The Act also stipulates in section 15 that:

"Any person who wrongfully takes part in any transaction, the object or one of the objects of which is to transfer or confer, wholly or partly, permanently or temporarily, the possession, custody or control of a child for valuable consideration shall commit an offence."

13. Section 16 (3) states:

"Any person, other than an agent of an educational or cultural institution or organization, who, in respect of a child under the age of 12:

(a) allows the child who is unaccompanied by an adult to have access to a video club;

(b) rents out a video tape to the child,

shall commit an offence."

Nepal

[Original: English]
[30 January 1995]

14. The Government of the Kingdom of Nepal declared that the King of Nepal is very aware of the prevention of the sale of children, child prostitution and child pornography. In that regard, the National Act and the Women Trafficking and Sale Act are felt sufficient for the abolition, control and prevention of the sale of children and child prostitution.

15. The Government has considered the problem of the trafficking in Nepalese women (including girl children) to India for the purposes of the flesh trade there. In that regard, the Government, with some NGOs, has arranged the social and economic rehabilitation of returnees from Indian brothels. Some skill-developing and income-generating programmes have been launched for the future livelihood of the victims.

16. In Nepal, all kinds of advertising concerning sex tourism and pornographic publications are banned. The Press and Publication Act and the Public Offence Act prohibit and control these activities. The Government has established projects to protect victims of prostitution from the risk of HIV contamination and to control the spread of AIDS.

Norway

[Original: English]
[25 January 1995]

17. The Government of Norway stated that the production of child pornography is in most cases punishable under sections 195, 196 or 212 of the General Civil Penal Code. According to these provision, to commit or to be an

accessory to committing any acts of indecency with children younger than 16 years of age is punishable by law. Sentences vary according to the type of indecent act which occurred and the age of the child. The act of sexual intercourse is punished more severely than other acts of indecency, with the maximum punishment being greater when the child is below 14 years of age.

18. Furthermore, section 195, concerning acts of indecency with children younger than 14 years, is also applicable if the act is committed abroad. Reference is made to section 12, Nos. 3 and 4 of the Penal Code.

19. Sections 196 or 212 may also be applied to an act committed abroad, when it is also punishable according to the law of the country in which it was committed. Though Norwegian police have investigated only a few cases where Norwegian residents have been suspected of crimes against children abroad, in 1992 the Norwegian Supreme Court convicted Norwegian citizens for sexual offences committed against children in Thailand and the Philippines.

20. The production of child pornography may also be punishable according to other provisions in the Penal Code, e.g. provisions in chapter 20 on felonies concerning family relationships, chapter 21 concerning felonies against personal liberty and chapter 22 concerning felonies against another person's life, body and health.

21. The importation, distribution and possession of pornography is governed by section 211 of the Penal Code. It should be noted that while distribution and importation with the intent to distribute pornography in general are punishable, the mere possession of child pornography is also punishable. In this regard, child pornography is defined as pictures, films, videotapes or the like, in which any person who is, must be considered to be, or is presented as being younger than 16 years of age is shown in an indecent or pornographic manner.

22. Although prostitution is not illegal per se in Norway, the Norwegian health authorities have initiated and financially support a wide range of activities targeting prostitution, including an outreach programme by the health and social services. Information in both Norwegian and English on HIV and AIDS as well as other sexually transmitted diseases has been published and widely distributed. The Ministry of Health and Social Affairs is financially supporting a national prostitution centre dealing with issues relating to both child and adult prostitution.

23. Education on sexuality is included in school curricula. Local authorities are responsible for securing collaboration between schools and health services to ensure an adequate programme of education in this field, in addition to providing information and counselling on sexual issues to all young people.

24. In regard to measures taken by non-governmental organizations to improve the protection of minors, it may be noted that the Norwegian Save the Children Fund has established a special centre to combat sexual abuse in Norway. This organization is furthermore involved in work on such questions as how to prevent the sexual abuse of children in developing countries, and what active measures might be taken to prevent such abuse.

Sweden

[Original: English]
[8 March 1995]

25. Some amendments to the Penal Code concerning sexual crimes perpetrated against children have been proposed by the Government of Sweden in a bill entitled "Increased protection for children, further measures against sexual abuse". This bill was presented to Parliament in June 1994 and the amendments proposed therein will, if adopted, apply as from 1 January 1995.

26. In order to increase conformity with article 34 of the Convention on the Rights of the Child, an amendment has been proposed to the provision on sexual molestation. This provision is applicable, for example, when a child under the age of 15 is induced to be a model for pornographic pictures or to otherwise adopt sexual poses. The new provision will be extended so that it will be punishable to induce a person who is 15 years old but under the age of 18 to participate in such acts. The maximum penalty for sexual molestation was raised last year from one to two years' imprisonment. The provision on sexual molestation is also of importance in controlling child pornography.

27. No legislative measures concerning child prostitution are put forward in the bill, as it is already forbidden in the Penal Code to obtain or attempt to obtain sexual intercourse with a person under 18 by making or promising payment and that a Commission of Inquiry into Prostitution in Sweden will present the results of its survey of the extent of child prostitution in its report at the end of this year. Information concerning the extent of child prostitution is very meagre. However, organized child prostitution may be considered to be non-existent. In the few cases discovered each year the social authorities intervene before the children become involved in prostitution that constitutes a habitual pattern of behaviour.

28. The maximum penalty for the offence of child pornography was raised last year from six months to two years' imprisonment. The offence consists of depicting children in pornographic images with the intention of having the images distributed or of distributing such images. According to the travaux préparatoires of this provision a child is a person who has not yet attained sexual maturity. The reasons for the absence of an age limit are that there would be evidential difficulties, especially regarding material produced in other countries, and that an age limit would mean further encroachment on the child's privacy, since the child would in certain cases have to be identified.

29. The new bill does not address child pornography, as it was decided to look into the question further. At present it is the subject of an inquiry by a commission which is studying how child pornography can be controlled and what legislative and other measures can be taken to prevent the existence and distribution of pornographic material concerning children. The question of an explicit age limit as well as the possible criminalization of the possession of child pornography are included in the study. The Commission is scheduled to complete its work by 30 June 1996.

30. Criminalization of possession of child pornography has been discussed in Parliament on several occasions. This legislative step would, however, entail constitutional amendments, which require two parliamentary decisions with a parliamentary election in between. A decision in favour of criminalization was made this year, but as it was presented to Parliament less than nine months before the election, which is the required time limit, the next decision cannot be taken before the parliamentary election in 1988. Consequently, the law on criminalization cannot come into effect before 1 January 1999.

31. As of 1 July 1993, children up to the age of 18 years have an ombudsman of their own with the task of monitoring matters affecting their rights and interests. In particular, the ombudsman shall verify that laws and statutory instruments, as well as their implementation, comply with Sweden's obligations under the Convention on the Rights of the Child. This includes the protection of children from all forms of sexual exploitation and sexual abuse, as well as the sale of, or traffic in, children for any purpose or in any form.

32. At the initiative of ECPAT (the International Campaign to End Child Prostitution in Asian Tourism), the first World Congress on the Commercial and Sexual Exploitation of Children will be held at Stockholm in 1996.

Yugoslavia

[Original: English]
[31 January 1995]

33. The sale of children, child prostitution and child pornography are regulated by the Constitution of Yugoslavia, the constitutions of its republics and the republican and other laws and regulations in the field of criminal and family legislation.

34. Article 155 of the Criminal Code of Yugoslavia contains special provisions criminalizing the sale of a supported person or the sale of children by parents or custodians. The criminal act is punishable with at least 5 years in prison, while the maximum punishment is 15 years.

35. The Government of Yugoslavia stated that no person has been reported for the criminal act of the sale of children in the last three years. However, one of the possibilities for illegal trafficking in children is the trafficking in children for adoption. To prevent such trafficking, particularly in children from the war-affected areas of the former Yugoslavia, separated from their parents or orphaned, the authorities of Yugoslavia decided not to allow adoption of children who have found shelter in Yugoslavia by foreigners pending the termination of the conflict in the former Yugoslavia. However, in cooperation with International Social Service, it has been established that there has been a number of cases of pregnant refugee women travelling abroad to give birth to their children and of consenting to their subsequent adoption, which has led to the suspicion that trafficking in children has taken place.

36. The criminal laws of the Yugoslav republics provide for more severe punishment of parental abuse, ill-treatment or neglect of children causing

lasting damage to children's health or their delinquency, prostitution, excessive use of alcohol or drug addiction. At the same time, the republican family laws provide for the possibility of taking children from parents and of giving them into the custody of other persons or social protection institutions, i.e. of denying parents their parental rights and obligations towards their children.

37. Article 251 of the Criminal Code of the Federal Republic of Yugoslavia provides for more severe punishment of the criminal act of mediation in prostitution if it is committed in respect of a female person under legal age or through coercion, threat or deception. In such cases, the punishment ranges between 1 and 10 years in prison.

38. Article 111 and 100 of the criminal laws of the Republics of Serbia and Montenegro provide for the criminal acts of pandering or enabling carnal knowledge whose object is a person under legal age over 14 years old. These criminal acts are punishable with 3 months to 5 years and with 3 years in prison respectively.

39. In addition to criminal sanctions aimed at preventing and suppressing prostitution of persons under legal age, the Laws on the Public Peace and Order of the Republics of Serbia and Montenegro provide for other penalties. Accordingly, a person who provides premises for prostitution to a person under legal age will be punished with 60 days in prison and if the perpetrator is a parent or a custodian he/she will be fined or punished with 30 days in prison.

40. The Criminal Code of the Federal Republic of Yugoslavia treats the presentation of pornographic material as a criminal act, the subject of protection being a person below 14 years of age and the object of the legislation to incriminate the sale, presentation and public exhibition or the making available in any other way of papers, pictures, audio-visual or other items of pornographic content or the presentation of pornographic shows. This criminal act is punishable with 1 year imprisonment or a fine.

41. The abuse of children for the purpose of prostitution and pornography is sporadic in the Federal Republic of Yugoslavia. This is evinced by the data of the competent services according to which no criminal charges have been filed for child prostitution and child pornography in the last three years.

42. The latest research has revealed that the said forms of sexual abuse of children (pandering, inciting or coercion to prostitution) are, as a rule, accompanied by violence in the family. Since distorted family relations are involved or the perpetrators are persons of aberrant behaviour, the measures most frequently resorted to are aimed at the prevention of more serious consequences.

43. The most frequent criminal acts involving children are theft and begging. By and large, this concerns the Romany population. The police and social services are making every effort to suppress this phenomenon.

44. The protection of children against all forms of abuse has been considerably improved by the establishment of social welfare centres and their transformation into custodian agencies authorized to exercise general control

over the exercise of parental rights. Children separated from their families because of sexual or other abuses are placed into custodial care, either of a family or an institution.

45. The consequences of sexual or other abuses sometimes require medical treatment, including psychiatric treatment. For this purpose, the Federal Republic of Yugoslavia has a network of children's dispensaries in municipal medical centres and children's wards in clinics and hospitals. Belgrade has a psychiatric clinic for children and an Institute for Mental Health, with great experience in work with children victims of sexual and other abuses.

46. Lately, a number of institutions and organizations have been established in the larger urban centres to deal with violence against women and children. Their assistance includes marriage, family and youth counselling services, an SOS telephone for women and children victims of violence, tele-appeals, etc. They are established by State institutions, humanitarian and other social organizations and financed from public sources and by various donors.